

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Rebecca R. Pallmeyer	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 7983	DATE	7/14/2003
CASE TITLE	Jose Suarez Rodriguez vs. John Ashcroft		

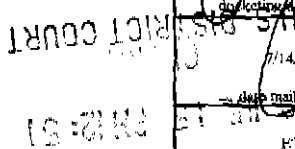
[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Opinion And Order. Respondents' motion for summary judgment (Doc. 10-1) is granted, and Rodriguez's petition for a writ of habeas corpus is denied.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	<div style="text-align: center;">  </div>	2	<div style="text-align: center;"> Document Number 13 </div>
<input type="checkbox"/>	No notices required.		number of notices	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		JUL 16 2003	
<input type="checkbox"/>	Notified counsel by telephone.		date docketed	
<input type="checkbox"/>	Docketing to mail notices.		docketing deputy initials	
<input checked="" type="checkbox"/>	Mail AO 450 form.		7/14/2003	
<input type="checkbox"/>	Copy to judge/magistrate judge.	date mailed notice	ETV	
<div style="display: flex; justify-content: space-between;"> <div>ETV</div> <div>courtroom deputy's initials</div> </div>		Date/time received in central Clerk's Office	mailing deputy initials	

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an alien temporarily to remain in the this country pending a decision on his application for admission. *Id.* Soon after being paroled, Petitioner was convicted of a crime of moral turpitude.² Because of that conviction, an immigration judge ordered Rodriguez deported and revoked his parole effective May 27, 1986.³ (*Id.*; Defendants' Memorandum of Law in Support of their Motion for Summary Judgment, at 1.) The INS was unable to repatriate Rodriguez to Cuba in 1986, however, and Petitioner remained in INS custody pursuant to 8 C.F.R. § 212.12 until he was paroled on February 6, 1991, pursuant to a decision of the Department of Justice Cuban Review Panel. (56.1 ¶ 8.)

In 1997, Rodriguez was convicted of aggravated battery and sentenced to two years in the Illinois Department of Corrections. (*Id.* ¶ 9.) He was convicted in 2000 of felony use or possession of a firearm, as well as possession of a controlled substances, crimes for which he was sentenced to seven and five years, respectively, also in Illinois. (*Id.*)

After Petitioner completed serving his sentences for these convictions, he was returned to INS custody on June 21, 2002. (*Id.*) In December 2002, INS officials reviewed Petitioner's case and revoked the parole that had been issued to him in 1991, pursuant to 8 C.F.R. § 212.12(h)(2) and (4). (*Id.* ¶ 10.) On December 20, 2002, the INS District Director for Chicago, Brian Perryman, informed Rodriguez by letter that his parole had been revoked due to his state court convictions, and that Rodriguez would be detained in custody of the INS, where he would subsequently be interviewed by the Cuban Review Plan Panel. (*Id.*) There is no dispute that Rodriguez has been

² Rodriguez pleaded guilty in California 1982 to shooting a rifle into an inhabited building, for which he was placed on three years probation. His probation was revoked in 1984 and he was sentenced to three years in prison when he was convicted of auto theft, for which he received a concurrent two year term. Petitioner was incarcerated for 26 months, and was paroled by California but held on detainer by the INS. (Department of Justice Review Panel's Final Decision - Parole, dated Nov. 9, 1990, Ex. 4 to 56.1.)

³ The record does not indicate whether Petitioner sought further review, or whether the Board of Immigration Appeals reviewed the immigration judge's decision.

considered annually for immigration parole in accordance with the Cuban Review Plan, 8 C.F.R. § 212.12. Upon reviewing a detainee's case, the Cuban Review Panel makes a recommendation to the Associate Commissioner for Enforcement of the INS, who has the discretion to approve parole. *Id.* In November 2002, Rodriguez filed a this petition for a writ of habeas corpus. Invoking *Zadvydas v. Davis*, 533 U.S. 678 (2001), he argues that his indefinite detention pending deportation, caused by Cuba's refusal to repatriate him and INS's refusal to release him on parole, violates due process.

Fifty years ago, the Supreme Court ruled in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), that the United States may, without violating the Constitution, indefinitely detain an excludable alien (that is, an alien deemed ineligible to be admitted to the United States) if his country of origin refuses to accept his return. In *Zadvydas*, 533 U.S. 678, the case principally relied on by Petitioner, the Court considered the constitutionality of the indefinite detention of resident aliens awaiting deportation. In doing so, the Court reaffirmed its decision in *Shaughnessy* by distinguishing between excludable aliens (i.e. aliens paroled into the United States pending admissibility) and aliens (i.e. resident aliens) who were admitted to the United States but subsequently ordered removed. *Zadvydas*, 533 U.S. at 682 (noting that "[a]liens who have not yet gained initial admission to this country would present a very different question"). As our Court of Appeals has stated, the Supreme Court's holding in *Shaughnessy* remains unaffected by the *Zadvydas* decision. *Hoyte-Mesa v. Ashcroft*, 272 F.3d 989, 991 (7th Cir. 2001).

In *Hoyte-Mesa*, the Seventh Circuit affirmed the denial of habeas relief to a petitioner who, like Petitioner Rodriguez, had arrived in the United States from Cuba on the Mariel boat lift. He was released into this country on parole, but was later convicted of endangering safety by conduct regardless of life, battery, and carrying a concealed weapon. *Id.* at 990. Upon release from prison, he was taken into INS custody until a decision of the Board of Immigration Appeals made final an order of deportation. *Id.* He was detained pending deportation and paroled under the Cuban


Review Plan in 1989. *Id.* In 1994, he was convicted in an Illinois court of a drug offense, and later he was convicted of a weapons violation. *Id.* at 990-91. After serving those sentences he was returned to federal custody. *Id.* at 991. The Seventh Circuit held that it was not a violation of the petitioner's due process rights to keep him in federal custody since Cuba would not accept his repatriation. *Id.* at 991-92.

Since Rodriguez, like the aliens in *Shaughnessy* and *Hoyte-Mesa*, was never granted admission to the United States prior to his exclusion, the Fifth Amendment does not offer him the same protections as resident aliens who are subsequently ordered removed. *Id.*, citing *Zadvydas*, 533 U.S. at 687 (additional citations omitted). In 1980 and again in 1991, Petitioner was granted parole into the United States with certain conditions, including compliance with the laws of this country. "His breach of those conditions is sufficient to authorize his current detention." *Hoyte-Mesa*, 272 F.3d at 991 (citation omitted). The length of Petitioner's deportation depends on the outcome of his annual parole review. Our Court of Appeals has stated that access to this type of administrative review satisfies detained aliens' due process rights. *Id.* at 992.

For these reasons, Respondents' motion for summary judgment (Doc. 10-1) is granted, and Rodriguez's petition for a writ of habeas corpus is denied.

ENTER:

Dated: July 14, 2003


REBECCA R. PALIMEYER
United States District Judge